

48A C.J.S. Judges § 169

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VI. Authority, Powers, and Duties

F. Acting in Different Court

§ 169. Extent of, and limits to, authority

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West's Key Number Digest

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Generally, a judge who is assigned to sit temporarily on a court other than that for which he or she was selected possesses no more or less authority in the case than that conferred upon the court to which the judge has been assigned.

A judge who is assigned to sit temporarily on a court other than that for which he or she was selected possesses no less authority in the case than that conferred upon the court to which the judge has been assigned.¹ Rather, the authority of a judge sitting or presiding for another generally extends to that which the regular judge has.² Accordingly, where the judge of a court which lacks jurisdiction to hear criminal cases is assigned to sit temporarily on a court which has jurisdiction over criminal cases, the judge may exercise jurisdiction over a criminal case.³

There is authority to the effect that where the jurisdiction of the court on which the judge normally sits is greater than that of the court to which the judge has been temporarily assigned, the judge may exercise only the power of the court to which he or she is currently assigned.⁴ However, it has also been held that where, under state law, circuit court judges have no authority to sit as law-trained magistrates, a circuit judge who presides over a prosecution in the circuit court's magistrate division exercises the original jurisdiction of the circuit court and not that of the magistrate court.⁵

A judge authorized to preside over two distinct and separate courts cannot, while sitting and holding court in one, legally enter an order in a cause pending in the other.⁶ Where a judge of a chancery court is also a judge of the probate court, but the two courts are not consolidated, the judge is to conduct each court separately; the judge is not permitted to lift matters over which the probate court has exclusive jurisdiction out of the probate court and apply equitable principles in disposing of controversies cognizable only in probate.⁷

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Footnotes

- 1 Cal.—*Gridley v. Gridley*, 166 Cal. App. 4th 1562, 83 Cal. Rptr. 3d 715 (1st Dist. 2008).
- Colo.—*Egelhoff v. Taylor*, 2013 COA 137, 312 P.3d 270 (Colo. App. 2013).
- Ind.—*In re Eiteljorg*, 951 N.E.2d 565 (Ind. Ct. App. 2011).
- Ky.—*Cox v. Braden*, 266 S.W.3d 792 (Ky. 2008).
- La.—*Smith v. Cappaert Manufactured Housing, Inc.*, 89 So. 3d 1234 (La. Ct. App. 3d Cir. 2012), writ denied, 98 So. 3d 857 (La. 2012) and writ denied, 98 So. 3d 871 (La. 2012).
- Nev.—*Landreth v. Malik*, 251 P.3d 163, 127 Nev. Adv. Op. No. 16 (Nev. 2011).
- N.Y.—*In re Marcus B.*, 95 A.D.3d 15, 942 N.Y.S.2d 38 (1st Dep't 2012).
- For detailed discussion of the authority, powers, and duties of special or substitute judge, see §§ 364 to 374.
- 2 Cal.—*Gridley v. Gridley*, 166 Cal. App. 4th 1562, 83 Cal. Rptr. 3d 715 (1st Dist. 2008).
- Ga.—*Surh v. State*, 303 Ga. App. 380, 693 S.E.2d 501 (2010).
- Ohio—*Ramos v. Khawli*, 181 Ohio App. 3d 176, 2009-Ohio-798, 908 N.E.2d 495 (7th Dist. Mahoning County 2009).
- Wash.—*State v. Duran-Madrigal*, 163 Wash. App. 608, 261 P.3d 194 (Div. 12011), review denied, 173 Wash. 2d 1015, 272 P.3d 246 (2012).
- 3 Ark.—*Simpson v. State*, 310 Ark. 493, 837 S.W.2d 475 (1992).
- Ind.—*Suggs v. State*, 428 N.E.2d 226 (Ind. 1981).
- Conviction by probate judge**
- Ohio—*Wright v. Money*, 82 Ohio St. 3d 424, 1998-Ohio-216, 696 N.E.2d 596 (1998).
- 4 Md.—*Genesis Health Ventures, Inc. v. Muller*, 124 Md. App. 671, 723 A.2d 556 (1999).
- 5 S.D.—*State v. Horst*, 504 N.W.2d 862 (S.D. 1993).
- 6 Ill.—*U.S. Life Ins. Co. v. Shattuck*, 159 Ill. 610, 43 N.E. 389 (1895).
- 7 Ark.—*Dent v. Wright*, 322 Ark. 256, 909 S.W.2d 302 (1995).

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